

TAXATION AND REVENUE DEPARTMENT
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**REGULATION PERTAINING TO THE
ENHANCED 911 ACT
SECTION 63-9D-3 through 63-9D-20 NMSA 1978**

[3.21.6 NMAC]

Revised July 2009

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63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

A. "911 emergency surcharge" means the monthly uniform charge assessed on each access line in the state and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico;

B. "911 service area" means the area designated by the fiscal agent, local governing body or the division to receive enhanced 911 service;

C. "access line" means a telecommunications company's line that has the capability to reach local public safety agencies by dialing 911, but does not include a line used for the provision of interexchange services or commercial mobile radio service;

D. "commercial mobile radio service" means service provided by a wireless real-time two-way voice communication device, including:

(1) radio-telephone communications used in cellular telephone service;

(2) the functional or competitive equivalent of radio-telephone communications used in cellular telephone service;

(3) a personal communications service; or

(4) a network radio access line;

E. "commercial mobile radio service provider" means a person who provides commercial mobile radio services, including a person who purchases commercial mobile radio service from a provider and resells that service;

F. "commission" means the public regulation commission;

G. "database" means information that is collected, formatted and disseminated and that is necessary for the functioning of the enhanced 911 system, including geographic information system (GIS) addressing and digital mapping information;

H. "department" means the taxation and revenue department;

I. "division" means the local government division of the department of finance and administration;

J. "enhanced 911 system" means a landline or wireless system consisting of network switching equipment, database, mapping and on-premises equipment that uses the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling a caller to reach a public safety answering point to report emergencies by dialing 911, and includes the capability to:

(1) selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area;

(2) automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate public safety answering point;

(3) provide one or more access paths for communications between users at different geographic locations through a network system that may be designed for voice or data, or both, and may feature limited or

open access and may employ appropriate analog, digital switching or transmission technologies; and

(4) relay to a designated public safety answering point a 911 caller's number and base station or cell site location and the latitude and longitude of the 911 caller's location in relation to the designated public safety answering point;

K. "enhanced 911 equipment" means the public safety answering point equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, logging recorders and software associated with call detail recording, call center work stations, training, latitude and longitude base station or cell site location data and GIS equipment necessary to obtain and process locational map and emergency service zone data for landline and wireless callers;

L. "equipment supplier" means a person who provides or offers to provide telecommunications equipment necessary for the establishment of enhanced 911 services;

M. "fiscal agent" means the local governing body that administers grants from the fund for a given locality or region by agreement;

N. "fund" means the enhanced 911 fund;

O. "local governing body" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code;

P. "proprietary information" means customer lists, customer counts, technology descriptions or trade secrets, including the actual or development costs of individual components of an enhanced 911 system; provided that such information is designated as proprietary by the commercial mobile radio service provider or telecommunications company; and provided further that "proprietary information" does not include individual payments made by the division or any list of names and identifying information of subscribers who have not paid the surcharge;

Q. "public safety answering point" means a twenty-four-hour local communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency;

R. "subscriber" means a person who is a retail purchaser of telecommunications services that are capable of originating a 911 call;

S. "surcharge" means the 911 emergency surcharge;

T. "telecommunications company" means a person who provides wire telecommunications services that are capable of originating a 911 call; and

U. "vendor" means a person that provides 911 equipment, service or network support.

(Laws 2005, Chapter 203, Section 1)

63-9D-4. PROVISION FOR ENHANCED 911 SERVICES BY LOCAL GOVERNING BODIES--ENHANCED 911 SYSTEM COSTS--PAYMENT OF COSTS--JOINT POWERS AGREEMENTS--AID OUTSIDE JURISDICTIONAL BOUNDARIES.--

A. A local governing body or a consortium of local governing bodies may incur costs for the purchase, lease, installation or maintenance of enhanced 911 equipment and training necessary for the establishment of an enhanced 911 system and may pay such costs through disbursements from the fund; provided that the local governing body has employed properly trained staff in its public safety answering point pursuant to the Public Safety Telecommunicator Training Act.

B. If the enhanced 911 system is to be provided for territory that is included in whole or in part in the jurisdiction of the local governing bodies of two or more public agencies that are the primary providers of emergency firefighting, law enforcement, ambulance, emergency medical or other emergency services, the agreement for the procurement of the enhanced 911 system shall be entered into by the fiscal agent designated by the local governing bodies. A local governing body may expressly exclude itself from the agreement. Nothing in this subsection shall be construed to prevent two or more local governing bodies from entering into a joint powers agreement pursuant to the Joint Powers Agreements Act to establish a separate legal entity that can enter into an agreement as the enhanced 911 system customer.

C. A public agency in an enhanced 911 service area shall provide that, once an emergency unit is dispatched in response to a request for aid through the enhanced 911 system, the emergency unit shall render services to the requester without regard to whether the unit is operating outside its normal jurisdictional boundaries.

D. A local governing body in an enhanced 911 service area shall provide GIS addressing and digital mapping data to the public safety answering point that provides the enhanced 911 service to the local governing body.

(Laws 2005, Chapter 203, Section 2)

63-9D-5. IMPOSITION OF SURCHARGE.--

A. There is imposed a 911 emergency surcharge in the amount of fifty-one cents (\$.51) to be billed to each subscriber access line by a telecommunications company and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico; provided, however, that the surcharge shall not be imposed upon subscribers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act.

B. Commercial mobile radio service providers shall be required to bill and collect the surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. Telecommunications companies shall be required to bill and collect the surcharge from their subscribers. The surcharge required to be collected by the commercial mobile radio service provider or telecommunications company shall be added to and stated clearly and separately in the billings to the subscriber. The surcharge collected by the commercial mobile radio service provider or telecommunications company shall not be considered revenue of the commercial mobile radio service provider or telecommunications company.

C. A billed subscriber is liable for payment of the 911 emergency surcharge until it has been paid to the commercial mobile radio service provider or telecommunications company.

D. A commercial mobile radio service provider or telecommunications company has no obligation to take legal action to enforce the collection of the surcharge; an action may be brought by or on behalf of the department. A commercial mobile radio service provider or telecommunications company, upon request and not more than once a year, shall provide to the department a list of the surcharge amounts uncollected, along with the names and addresses of subscribers who carry a balance that can be determined by the commercial mobile radio service provider or telecommunications company to be nonpayment of the surcharge. The commercial mobile radio service provider or telecommunications company shall not be held liable for uncollected surcharge amounts.

E. The surcharge shall commence with the first billing period of each subscriber on or following July 1, 2005.

(Laws 2005, Chapter 203, Section 3)

3.21.6.8 - IMPOSITION BARRED BY FEDERAL LAW - LOCAL EXCHANGE ACCESS LINES IN INDIAN COUNTRY FOR TRIBE OR TRIBAL MEMBERS:

A. Neither the 911 emergency surcharge nor the network and database surcharge applies to local exchange access lines provided to an Indian tribe or member thereof on that tribe's territory if imposition of such surcharges is prohibited by federal law. For so long as imposition of such surcharges is prohibited by federal law, local exchange telephone companies

shall not bill the surcharges to, or collect the surcharges from, an Indian tribe or member thereof. Local exchange access lines are provided on a tribe's territory when the local exchange access line provides local exchange access through an instrument located on the tribe's territory.

B. The local exchange telephone company must demonstrate that the local exchange access line is provided to an Indian tribe or member thereof. The local exchange telephone company must also demonstrate that the line provides local exchange access through an instrument located on the tribe's territory. The documents demonstrating that providing local exchange access lines are not subject to the surcharges imposed under the Enhanced 911 Act shall be retained in the local exchange telephone company's records.

(1) The first requirement may be met by obtaining a statement signed by the local exchange service customer that the customer is an Indian tribe or member thereof. In the case of the Indian tribe itself, the statement must be attested to by a tribal official. In the case of an individual, the statement must also either specify the customer's official tribal or BIA census number or, when the customer's Indian tribe does not maintain an official census system, be attested to by an official of the customer's Indian tribe confirming this statement. This statement may also be provided to the local exchange telephone company by the Indian tribe on behalf of one or more of its members if attested to by a tribal official. Upon request, the secretary may approve additional methods. This documentation shall be conclusive evidence, and the only material evidence, that the customer is an Indian tribe or member thereof.

(2) The second requirement may be met if the local exchange telephone company keeps records adequate to document that the local exchange access lines provide local exchange access to an instrument located on the customer's tribe's territory.

C. Local exchange access lines provided in New Mexico in Indian country to the following persons are subject to the gross receipts tax:

- (1) a person who is not an Indian tribe or member thereof;
- (2) a person who is an Indian tribe other than the Indian tribe on whose territory the sale takes place; and
- (3) a person who is a member of an Indian tribe other than the Indian tribe on whose territory the sale takes place except that, if the person is the spouse of a member of the Indian tribe on whose territory the sale takes place, that person will be considered for the purposes of Section 3.21.6.8 NMAC to be a member of the spouse's Indian tribe.

D. Local exchange access lines provided in New Mexico in Indian country are subject to the surcharges imposed under the Enhanced 911 Act when the local exchange access line provides local exchange access to an instrument not located on the customer's tribe's territory.

E. For the purposes of Section 3.21.6.8 NMAC:

- (1) the terms "Indian tribe" and "tribe's territory" have the meaning set forth for those terms in Section 3.2.4.7 NMAC; and
- (2) "instrument" does not include any mobile instrument.

F. Section 3.21.6.8 NMAC is retroactively applicable to transactions occurring on or after January 1, 1992.

[3/16/95, 5/15/97; 3.21.6.8 NMAC - Rn & A, 3 NMAC 21.6.8, 1/15/01]

63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--

A. The surcharge collected shall be remitted monthly to the department, which shall administer and enforce collection of the surcharge in accordance with the Tax Administration Act. The surcharge shall be remitted to the department no later than the twenty-fifth day of the month following the month in which the surcharge was imposed. At that time, a return for the preceding month shall be filed with the department in such form as the department and telecommunications company or commercial mobile radio service provider shall agree upon. A telecommunications company or commercial mobile radio service provider required to file a return shall deliver the return together with a remittance of the amount of the surcharge payable to the department. The telecommunications company or commercial mobile radio service provider shall maintain a record of the amount of each surcharge collected pursuant to the Enhanced 911 Act. The record shall be maintained for a period of three years after the time the surcharges were collected.

B. From a remittance to the department made on or before the date it becomes due, a telecommunications company or commercial mobile radio service provider required to make a remittance shall be entitled to deduct and retain one percent of the collected amount or fifty dollars (\$50.00), whichever is greater, as the administrative cost for collecting the surcharge. (Laws 2005, Chapter 203, Section 4)

**63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--
DISBURSEMENT--REPORTS TO LEGISLATURE.--**

A. There is created in the state treasury a fund that shall be known as the "enhanced 911 fund". The fund shall be administered by the division.

B. All surcharges collected and remitted to the department shall be deposited in the fund.

C. Money deposited in the fund and income earned by investment of the fund are appropriated for expenditure in accordance with the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the fund to, or on behalf of, participating local governing bodies or their fiscal agents upon vouchers signed by the director of the division solely for the purpose of reimbursing local governing bodies or their fiscal agents, commercial mobile radio service providers or telecommunications companies for their costs of providing enhanced 911 service. A person who purchases commercial mobile radio services or telecommunications services from a commercial mobile radio service provider or telecommunications company for the purpose of reselling that service is not eligible for reimbursement from the fund. Money in the fund may be used for the payment of bonds issued pursuant to the Enhanced 911 Bond Act.

E. Annually, the division may expend no more than five percent of all money deposited annually in the fund for administering and coordinating activities associated with implementation of the Enhanced 911 Act.

F. Money in the fund may be awarded as grant assistance to provide enhanced 911 service and equipment upon application of local governing bodies or their fiscal agents to the division and upon approval by the state board of finance. If it is anticipated that the funds available to pay all requests for grants will be insufficient, the state board of finance may reduce the percentage of assistance to be awarded. In the event of such reduction, the state board of finance may award supplemental grants to local governing bodies that demonstrate financial hardship.

G. After requesting enhanced 911 service from a telecommunications company or commercial mobile radio service provider, a local governing body may, by ordinance or resolution, recover from the fund an amount necessary to recover the costs of providing the enhanced 911 system in its designated 911 service area. The division, on behalf of local governing bodies, shall directly pay or reimburse commercial mobile radio service providers and telecommunications companies for their costs of providing enhanced 911 service. If a commercial mobile radio service provider or telecommunications company does not receive payment or reimbursement for the costs of providing enhanced 911 service, the provider is not obligated to provide that service.

H. The division shall report to the legislature each session the status of the fund and whether the current level of the 911 emergency surcharge is sufficient, excessive or insufficient to fund the anticipated needs for the next year.

(Laws 2005, Chapter 203, Section 5)

63-9D-8.1. DIVISION POWERS.--

A. The division may adopt reasonable rules necessary to carry out the provisions of the Enhanced 911 Act.

B. The division may fund enhanced 911 systems pursuant to the provisions of the Enhanced 911 Act.

C. Division powers are limited and do not include power to intervene between two vendors or restrict marketing efforts of vendors.

D. The division and the local governing body may establish 911 service areas.

E. Unless otherwise provided by law, no rule affecting any person, agency, local governing body, commercial mobile radio service provider or telecommunications company shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the division or a hearing officer designated by the director. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons or agencies who have made a written request for advance notice of the hearing and to all local governing bodies, telecommunications companies and commercial mobile radio service providers.

F. All rules shall be filed in accordance with the State Rules Act. (Laws 2005, Chapter 203, Section 6)

***** REPEALED EFFECTIVE JUNE 17, 2005,
BY LAWS 2005, CHAPTER 203, SECTION 15 *****

63-9D-9.2. IMPOSITION OF SURCHARGE; LIABILITY OF USER FOR SURCHARGE; COLLECTION; UNCOLLECTED AMOUNTS.

A. There is imposed a wireless enhanced 911 surcharge in the amount of fifty-one cents (\$.51) that shall commence with the first billing period of each subscriber on or following ninety days after July 1, 2001.

B. Commercial mobile radio service providers shall be required to bill and collect the wireless enhanced 911 surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. The wireless enhanced 911 surcharge required to be collected by the commercial mobile radio service provider shall be added to and stated clearly and separately in the billings to the subscriber. The wireless enhanced 911 surcharge collected by the commercial mobile radio service provider shall not be considered revenue of the commercial mobile radio service provider.

C. A billed subscriber is liable for payment of the wireless enhanced 911 surcharge until it has been paid to the commercial mobile radio service provider.

D. A commercial mobile radio service provider has no obligation to take legal action to enforce the collection of the wireless enhanced 911 surcharge. An action may be brought by or on behalf of the department. A commercial mobile radio service provider, upon request and not more than once a year, shall provide the department a list of the wireless enhanced 911 surcharge amounts uncollected along with the names and addresses of subscribers who carry a balance that can be determined by the commercial mobile radio service provider to be the nonpayment of the wireless enhanced 911 surcharge. The commercial mobile radio service provider shall not be held liable for uncollected wireless enhanced 911 surcharge amounts.

(Laws 2002, Chapter 18, Section 6)

63-9D-10. IMMUNITY.--Enhanced 911 systems are within the governmental powers and authorities of the local governing body or state agency in the provision of services for the public health, welfare and safety. In contracting for such services or the provisioning of an enhanced 911 system, except for willful or wanton negligence or intentional acts, the local governing body, public agency, equipment supplier, telecommunications company, commercial mobile radio service provider and their employees and agents are not liable for damages resulting from installing, maintaining or providing enhanced 911 systems or transmitting 911 calls.

(Laws 2005, Chapter 203, Section 7)

63-9D-11. PRIVATE LISTING SUBSCRIBERS AND 911 SERVICE.--

A. Private listing subscribers waive the privacy afforded by nonlisted or nonpublished numbers only to the extent that the name and address associated with the telephone number may be furnished to the enhanced 911 system for call routing or for automatic retrieval of location information in response to a call initiated to 911.

B. Information regarding the identity of private listing subscribers, including names, addresses, telephone numbers or other identifying information, is not a public record and is not available for inspection.

C. Proprietary information provided by a commercial mobile radio service provider or telecommunications company is not public information and may not be released to any person without the express permission of the submitting provider, except that information may be released or published as aggregated data that does not identify the number of subscribers or identify enhanced 911 system costs attributable to an individual commercial mobile radio service provider or telecommunications company.

(Laws 2005, Chapter 203, Section 8)

63-9D-13. DEFINITIONS.--As used in the Enhanced 911 Bond Act:

A. "board" means the state board of finance;

B. "division" means the local government division of the department of finance and administration;

C. "enhanced 911 bonds" means the bonds authorized in the Enhanced 911 Bond Act;

D. "enhanced 911 project" means actions authorized under Section 63-9D-14 NMSA 1978 that pertain to a specific component of the enhanced 911 system; and

E. "enhanced 911 revenue" means the revenue to and the income of the enhanced 911 fund that are pledged to the payment of enhanced 911 bonds under the Enhanced 911 Bond Act.

(Laws 2005, Chapter 203, Section 9)

63-9D-14. ENHANCED 911 BONDS--AUTHORITY TO ISSUE-- PLEDGE OF REVENUES--LIMITATION ON ISSUANCE.--

A. In addition to any other law authorizing the board to issue revenue bonds, the board may issue enhanced 911 bonds pursuant to the Enhanced 911 Bond Act for the purposes specified in this section.

B. Enhanced 911 bonds may be issued for:

(1) acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues;

(2) reimbursing a commercial mobile radio service provider or telecommunications company for its reasonable costs of providing enhanced 911 service, the payment of which shall be secured by enhanced 911 revenues; or

(3) reimbursing a local governing body or its fiscal agent for its reasonable costs of providing the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues.

C. The board may pledge irrevocably enhanced 911 revenues in the manner set forth in Subsection B of this section to the payment of the interest on and principal of enhanced 911 bonds. Any general determination by the board that expenditures are reasonably related to and constitute a part of a specified enhanced 911 project shall be conclusive if set forth in the proceedings authorizing the enhanced 911 bonds.

(Laws 2005, Chapter 203, Section 10)

63-9D-17. BOND AUTHORIZATION.--The board may issue and sell enhanced 911 bonds in compliance with the Enhanced 911 Bond Act. The board shall schedule the issuance and sale of the bonds in the most expeditious and economical manner upon a finding by the board that the division has certified that the need exists for the issuance of bonds and upon an action by the board designating the enhanced 911 fund to be the source of pledged revenues.
(Laws 2005, Chapter 203, Section 11)

63-9D-18. AUTHORITY TO REFUND BONDS.--The board may issue and sell at public or private sale enhanced 911 bonds to refund outstanding enhanced 911 bonds and other bonds payable from the enhanced 911 fund by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.
(Laws 2005, Chapter 203, Section 12)

63-9D-20. AMOUNT OF SURCHARGE--SECURITY FOR BONDS.--

A. The legislature shall provide for the continued imposition, collection and deposit of the 911 emergency surcharge into the enhanced 911 fund in amounts that, together with other amounts deposited into the fund, will be sufficient to produce an amount necessary to meet annual debt service charges on all respective outstanding enhanced 911 bonds.

B. The legislature shall not repeal, amend or otherwise modify any law that affects the 911 emergency surcharge in a manner that impairs any outstanding enhanced 911 bonds secured by a pledge of the 911 emergency surcharge unless:

- (1) the outstanding enhanced 911 bonds to which the revenues from the surcharge are pledged have been discharged in full; or
- (2) provision has been made to discharge fully the outstanding enhanced 911 bonds to which the revenues from the surcharge are pledged.

C. Nothing in this section shall require any increase in the 911 emergency surcharge.
(Laws 2005, Chapter 203, Section 13)
